



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMERCIAL CENTER OF PATENTS AND TRADE MARKS
Washington, D.C. 20531
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/820,053	03/28/2001	Donald R. Owen	068370.0104	3080

7590 02/05/2003
HOWERY SIMON ARNOLD AND WHITE, LLP
750 BERING DRIVE
HOUSTON, TX 77057-2198

EXAMINER

SNEDDEN, SHERIDAN

ART UNIT	PAPER NUMBER
----------	--------------

1653

DATE MAILED: 02/05/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/820,053

Examiner

Sheridan K Snedden

Applicant(s)

OWEN, DONALD R.

Art Unit

1653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-52 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-7, drawn to a peptide comprising phenylalanine, leucine, alanine, and lysine, classified in class 530, subclass 300+.
 - II. Claims 8-15, 17-20, drawn to a method of inhibiting the growth of cancer cells *in vitro*, classified in class 514, subclass 2.
 - III. Claims 8-16, 18-31, drawn to a method of inhibiting the growth of cancer cells *in vivo*, classified in class 514, subclass 2.
 - IV. Claims 32-46, drawn to a method of inhibiting bacterial cells, classified in class 514, subclass 2.
 - V. Claims 32-43 and 47-48, drawn to a method of inhibiting fungal cells, classified in class 514, subclass 2.
 - VI. Claims 32-43 and 49-50, drawn to a method of inhibiting protozoa, classified in class 514, subclass 2.
 - VII. Claims 32-43 and 51, drawn to a method of inhibiting intracellular organisms, classified in class 514, subclass 2.
 - VIII. Claims 32-43 and 52, drawn to a method of inhibiting viruses, classified in class 514, subclass 2.
2. The inventions are distinct, each from the other because of the following reasons:

Art Unit: 1653

Invention I is related to inventions II-VIII as product and processes of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the peptides may be used in a method a producing antibodies, for example, or in any one of inventions II-VIII.

The methods of inventions II-VIII require different products and steps and have different endpoints. Therefore, inventions II-VIII are patentably distinct.

3. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Groups II-VIII, restriction for examination purposes as indicated is proper.

4. In addition, each of inventions I through VIII are directed to patentably distinct and/or independent peptides (or use thereof). Absent factual statement/evidence to the contrary, each different peptide sequence is considered distinct and/or independent, one from the other on the basis of physical, chemical and biological properties and function(s). Thus, when any one of the inventions I through VIII are elected under 35 USC 121, an additional election under 35 USC 121 is also required as to the elected peptide (by SEQ ID NO). This selection of the peptide by SEQ ID NO is not a species election.

Art Unit: 1653

Advisory Information

5. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

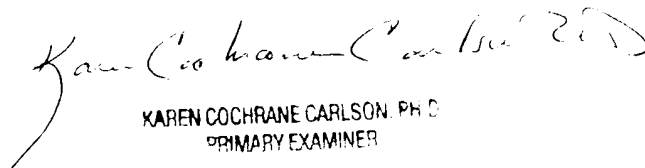
Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheridan K Snedden whose telephone number is (703) 305-4843. The examiner can normally be reached on Monday - Friday, 8:30 AM to 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on (703) 308-2923. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-3975 for regular communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

SKS
January 30, 2003

SKS


KAREN COCHRANE CARLSON, PH.D.
PRIMARY EXAMINER